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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 DOMINGO F. LOPEZ
1236 S. Arizona Avenue
15 Los Angeles, California 90022

16 Respiratory Care Practitioner License No. 24281

17 Respondent.

Case No. D1 2004 212

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

18
19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Accusation and Petition to
22 Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care
23 Board of California, Department of Consumer Affairs(Board).

24 2. On or about May 11, 2005, the Board issued Respiratory Care Practitioner
25 License No. 24281 to Domingo F. Lopez (Respondent). This license was in effect at all times
26 relevant to the charges brought herein and will expire on May 31, 2008, unless renewed.

27 3. In a disciplinary action entitled "*In the Matter of the Statement of Issues*
28 *Against Domingo Francisco Lopez*", Case No. S-343, the Board issued a decision effective May

1 11, 2005, in which Respondent was issued a probationary license for a period of three (3) years
2 with certain terms and conditions. A copy of that decision is attached as Exhibit A and is
3 incorporated herein by reference.

4 JURISDICTION

5 4. This Accusation and Petition to Revoke Probation is brought before the
6 Board under the authority of the following laws. All section references are to the Business and
7 Professions Code (Code) unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of
9 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
10 8.3, the Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,
12 and revoke licenses to practice respiratory care as provided in this chapter."

13 7. Section 3754 of the Code states: "The board may deny an application for,
14 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
15 upon, a license in any decision made after a hearing, as provided in Section 3753."

16 8. Section 3750.5 of the Code states:

17 "In addition to any other grounds specified in this chapter, the board may deny,
18 suspend, or revoke the license of any applicant or license holder who has done any of the
19 following:

20 " . . .

21 "(b) Used any controlled substance as defined in Division 10 (commencing with
22 Section 11000) of the Health and Safety Code. . . ."

23 COST RECOVERY

24 9. Section 3753.5, subdivision (a) of the Code states:

25 "In any order issued in resolution of a disciplinary proceeding before the board,
26 the board or the administrative law judge may direct any practitioner or applicant found to have
27 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
28 investigation and prosecution of the case."

1 10. Section 3753.7 of the Code states:

2 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
3 include attorney general or other prosecuting attorney fees, expert witness fees, and other
4 administrative, filing, and service fees.”

5 11. Section 3753.1, subdivision (a) of the Code states:

6 “An administrative disciplinary decision imposing terms of probation may
7 include, among other things, a requirement that the licensee-probationer pay the monetary costs
8 associated with monitoring the probation.”

9 FIRST CAUSE TO REVOKE PROBATION

10 (Biological Fluid Testing)

11 12. At all times after the effective date of Respondent’s probation, Condition 2
12 stated:

13 Respondent, at his expense, shall participate in random testing, including, but not
14 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
15 testing, or a drug screening program approved by the Board. Test costs range from
16 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
17 frequency and location of testing will be determined by the Board.

18 At all times, Respondent shall fully cooperate with the Board or any of its
19 representatives, and shall, when directed, appear for testing as requested, and submit to
20 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
21 or other controlled substances.

22 If Respondent is unable to provide a specimen in a reasonable amount of
23 time from the request, while at the work site, Respondent understands that any Board
24 representative may request from the supervisor, manager or director on duty to observe
25 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,
26 until such time Respondent provides a specimen acceptable to the Board.

27 Failure to submit to testing or appear as requested by any Board
28 representative for testing, as directed, shall constitute a violation of probation, and shall

1 result in the filing of an accusation and/or a petition to revoke probation against
2 Respondent's respiratory care practitioner license.

3 13. Respondent's probation is subject to revocation because he failed to
4 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
5 this violation are as follows:

6 A. As part of respondent's random drug testing program, he was required to
7 telephone Compass Vision, Inc. (CVI) on a daily basis to determine if he needed to
8 provide a specimen for testing and analysis. Respondent failed to telephone CVI on the
9 following dates: June 6 and 9, 2005, July 27, 2005, December 25, 2005, March 9 and 31,
10 2006, February 3 and 21, 2007, May 30, 2007, June 13, 2007, July 21, 2007, September
11 16, 2007, October 2, 2007, November 4 and 7, 2007, December 8, and 28, 2007, and
12 January 2, 2008.

13 B. Respondent was scheduled to provide a specimen for testing and analysis
14 on January 2, 2008. He failed to provide a specimen as directed.

15 SECOND CAUSE TO REVOKE PROBATION

16 (Abstain from Use of Drugs and Alcohol)

17 14. At all times after the effective date of Respondent's probation, Condition 3
18 stated:

19 Respondent shall completely abstain from the possession or use of alcohol,
20 controlled substances, dangerous drugs, and any and all other mood altering drugs,
21 substances and their associated paraphernalia, except when the drugs are lawfully
22 prescribed by a licensed practitioner as part of a documented medical treatment.

23 Respondent shall execute a release authorizing the release of pharmacy and
24 prescribing records as well as physical and mental health records. Respondent shall also
25 provide information of treating physicians, counselors or any other treating professionals
26 as requested by the Board.

27 Respondent shall ensure that he is not in the presence of or in the same physical
28 location as individuals who are using illegal substances, even if Respondent is not

1 personally ingesting the drug(s).

2 Any positive result that registers over the established laboratory cutoff level shall
3 constitute a violation of probation and shall result in the filing of an accusation and/or a
4 petition to revoke probation against Respondent's respiratory care practitioner license.

5 Respondent also understands and agrees that any positive result that registers over
6 the established laboratory cutoff level shall be reported to each of Respondent's
7 employers.

8 15. Respondent's probation is subject to revocation because he failed to
9 comply with Probation Condition 3, referenced above. The facts and circumstances regarding
10 this violation are as follows:

11 A. On November 20, 2006, Respondent appeared at a collection site to
12 provide a urine specimen for testing and analysis in accordance with his probation
13 monitoring program. The laboratory report from CVI indicated that he tested positive for
14 Ethyl Glucuronide at 370 ng/mL, indicating consumption of alcohol.

15 B. On August 1, 2007, Respondent appeared at a collection site to provide a
16 urine specimen for testing and analysis. The laboratory report from CVI indicated he
17 tested positive at 17 ng/mL for Cannabinoids¹, which are a controlled substance and mind
18 altering drug.

19 THIRD CAUSE TO REVOKE PROBATION

20 (Obey All Laws)

21 16. At all times after the effective date of Respondent's probation, Condition 5
22 stated:

23 Respondent shall obey all laws, whether federal, state, or local. Respondent shall
24 also obey all regulations governing the practice of respiratory care in California.

25 _____
26 1. Cannabinoids contain THC (delta-9-tetrahydrocannabinol), the main active chemical in
27 marijuana. Marijuana is a controlled substance under Health and Safety Code section 11054,
28 subdivision (d) (13). Marijuana (Cannabis sativa) induces psychotomimetic effects and thus is
a mood altering drug within the meaning of Probation Condition 3.

Respondent shall notify the Board in writing within 14 days of any incident resulting in his arrest, or charges filed against, or a citation issued against Respondent.

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent violated section 3750.5, subdivision (b) of the Code in that he used controlled substances, specifically Cannabinoids. The facts and circumstances, set forth in Paragraph 15, subparagraph B, of this Accusation and Petition to Revoke Probation are incorporated herein by reference.

FOURTH CAUSE TO REVOKE PROBATION

(Quarterly Reports)

18. At all times after the effective date of Respondent's probation, Condition 6 stated:

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation, and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

1 Failure to submit complete and timely reports shall constitute a violation of
2 probation.

3 19. Respondent's probation is subject to revocation because he failed to
4 comply with Probation Condition 6 referenced above. The facts and circumstances regarding this
5 violation are as follows:

6 A. Respondent failed to submit his Quarterly Report of Compliance for the
7 period April 1 through June 30, 2007, which was due to the Board by July 7, 2007.

8 B. Respondent failed to submit his Quarterly Report of Compliance for the
9 period October 1, 2007 through December 31, 2007, which was due to the Board by
10 January 7, 2008.

11 CAUSE FOR DISCIPLINE

12 (Use of a Controlled Substance)

13 20. Respondent is subject to disciplinary action under section 3750.5,
14 subdivision (b) of the Code, in that he used controlled substances, specifically Cannabinoids.
15 The facts and circumstances set forth in Paragraph 15, subparagraph B, of this Accusation and
16 Petition to Revoke Probation, are substantially related to the qualifications, functions or duties of
17 a respiratory care practitioner, and are incorporated herein by reference.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking the probation that was granted by the Respiratory Care Board of
5 California in Case No. S343;

6 2. Revoking or suspending Respiratory Care Practitioner License No. 24281
7 issued to Domingo F. Lopez;

8 3. Ordering Domingo F. Lopez to pay the Respiratory Care Board the costs
9 of the investigation and enforcement of this case, and if probation is continued or extended, the
10 costs of probation monitoring; and

11
12 4. Taking such other and further action as deemed necessary and proper.
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14 DATED: January 18, 2008
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17 Original signed by: _____
18 STEPHANIE NUNEZ
19 Executive Officer
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant
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